

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

RAFAEL TORMES-ORTIZ

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

CASE NO: CV-97-1618 (JP)

CR-88-253 (GG)

**MOTION REQUESTING EVIDENTIARY HEARING TO ENTERTAIN
PLAINTIFF'S REQUEST FOR RE-SENTENCING**

TO THE HONORABLE COURT:

COMES NOW subscribing **ATTORNEY** who very respectfully alleges and prays:

On or about **January 19, 2001** plaintiff's **28 U.S.C. §2255** motion was remanded back to this court for final resolution. Almost **five (5) years** have elapsed since this motion was filed and **no date** has been set for a Evidentiary Hearing. On **May 13, 2005**, plaintiff filed a motion to further amend and supplement his motion filed in **2001**. This amendment was based on the recent Supreme Court decisions in the cases of **Blakely v. Washington**, 542 U.S. 296 (2004) and **United State v. Booker**, 243 U.S. 220 (2005). These cases have held that the Sixth Amendment of the United States Constitution is violated by the imposition of an enhanced sentence under the United State Sentencing Guidelines when such enhancement is based on facts, other than prior convictions, determined by the sentencing Judge and which were not proved beyond a reasonable doubt by a jury or admitted by the defendant.

Since the initial filing, a hearing date has not been set. The plaintiff thus asserts that

he is entitled to a hearing specially since this motion was filed nearly five years ago. The merits of Plaintiff's allegations have been well substantiated in all his previous motions, and the plaintiff sees no reason to further delay this case. For this reason plaintiff respectfully requests this Honorable Court schedule a Evidentiary Hearing in the referenced matter as soon as the Court's calendar may allow to.

WHEREFORE, it is most respectfully requested that this Honorable Court take knowledge of the aforementioned.

I HEREBY CERTIFY that on **December 16th 2005**, I electronically filed the foregoing motion with the Clerk of the Court using the **CM/ECF** system, and that notice of this motion has been sent by regular mail carrier to **ROSE A. BRICENO** at the U.S. Department of Justice, Criminal Division - Bond Building, Narcotics/Dangerous Drug Section 10th & Constitution Ave. NW, Washington, DC 20530 and to **NEIL GALLAGHER** at the U.S. Department of Justice, Criminal Division, Narcotics and Dangerous Drug Section, PO Box 27312, Washington, DC 20038.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th of December of the year 2005.

By: /s/ **PETER JOHN PORRATA**
#128901

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